

**Peter Pelland**

25 Depot Road, Haydenville, MA 01039

February 3, 2002

Federal Trade Commission  
Office of the Secretary  
Room 159  
600 Pennsylvania Avenue, N.W.  
Washington, DC 20580



As an individual who has been aggressively battling both telemarketers and broadcast fax companies over the last year, and voluntarily devoting a significant amount of my personal time toward educating other consumers regarding the issues involved, I would like to offer my comments regarding the Federal Trade Commission's proposal for a National "Do Not Call" Registry.

It should be increasingly clear to anyone who has studied the telemarketing industry that the existing rules of the U.S. Telephone Consumer Protection Act fall significantly short in even stemming the tide, let alone halting, the questionable practices of a multi-billion dollar industry which is essentially based upon an ever more refined system of consumer harassment and deception.

Current laws burden the individual consumer with the need to continue the endurance of repeated telemarketing intrusions while recurringly entering Do Not Call requests with individual callers and telemarketing companies. Without the establishment of a national, centralized Do Not Call database, the maintenance of Do Not Call lists is the almost incomprehensible responsibility of the telemarketers themselves. This self-policing arrangement has proven to be a dismal failure akin to leaving the keys to prison cells in the hands of inmates rather than guards and a warden. Current practices make it all too easy for telemarketers to falsify their Do Not Call lists or to minimize the lists' contents.

Most consumers are unfamiliar with the current law, and most of those who are aware of the law find its implementation both cumbersome and confusing. Despite the claims of the telemarketing industry, there is no question that the vast majority of consumers do not want to receive telephone solicitations of any nature. The relatively small total number of documented Do Not Call requests, as a percentage of the total population, is an indication of the inadequacy of the current law's requirements. Consumers who plead that they not be called again, or that simply hang up in frustration are not added to Do Not Call lists because they did not utilize the correct and very specific terminology which the law requires. My experience has shown that, even when complying with the letter of the law in the process of making a formal Do Not Call request, many telemarketers are far more interested in moving on to the next call than in properly processing my request or maintaining an adequate registry. I generally find that, after telling a caller that "this is a formal Do Not Call request", I must quickly add the words "Do not hang up" prior to asking to speak with a supervisor. In many instances, the telemarketer will nonetheless terminate the call, which has almost always managed to evade identity through current Caller ID

systems. In other instances, when asking a telemarketer to add all of my residential telephone numbers (as opposed to only the number which had just been called) to his company's Do Not Call list, I am told that this cannot be done, a contributing factor behind the reprehensible statistic that the majority of the telemarketing calls intruding upon my place of residence come in on one of my children's telephone numbers.

In the telemarketing industry, time is money, and Do Not Call list requirements are seen as nothing more than a bureaucratic burden, if not an outright joke. In courts of law, I have had telemarketers produce falsified Do Not Call lists which either fail to include documented Do Not Call requests or indicate such requests as actual affirmative requests for further information. I have also been accused of "seeding" call lists or, in the case of broadcast fax companies, "inviting" incoming faxes simply by nature of having included my fax number on my calling card or within a telephone directory listing. The bottom line is that telemarketers are in the lucrative business of selling products and services to unwitting consumers. They cannot be expected to be concurrently in the business of limiting their own marketing efforts.

The telemarketing industry would like to portray itself as a "victim" of regulations; however, it is important to understand that we are not talking about small "Mom & Pop" businesses which are utilizing the telephone to exercise their right of free enterprise in making legitimate calls to prospects. Telemarketing is to sales calls what agribusiness is to the family farm or what hydraulic mining is to the gold prospector. One need only look into the sophistication of the current generation of auto-dialers and so-called "predictive dialing" equipment to understand both the inner workings and the intentions of the industry. Predictive dialing is telemarketing at its worst. We have all received calls with "dead air"... where there appears to be nobody at the initiating end of the call. In fact, these are calls from predictive dialing equipment which calls several numbers simultaneously, based upon the statistical probability that only a given percentage of call recipients will actually be home or answer the call. The "dead air" which we encounter is usually the result of having another of the simultaneous call recipients "win the race" in answering the phone. Predictive dialing equipment manufacturers refer to "abandoned calls" as occurring "when a live person picks up the phone, but there are no available agents to take the call" or "when the person hangs up the phone before the dialer switches the call to an agent." (*From the Digisoft website - <http://www.di&oft.com/solutions/predictivehome.htm>*) In other instances, the "dead air" results when a predictive dialing system encounters an unconventional salutation (such as "Smith Residence"), when it is programmed to detect the live word "hello." Telemarketers do not want to waste their own valuable time but have no hesitancy whatsoever in wasting the time of their victims; however, we can rest assured that the predictive dialing equipment will call again.

Sadly, as technology advances, extremely sophisticated PC-based auto-dialers and predictive dialing systems are becoming less and less expensive, contributing to the explosive growth of the industry, the increase in the number of calls and the need for far greater industry regulation. A company called Dirt Cheap Dialers advertises "Complete Systems Starting At \$1,595" available to handle "2, 4, 8, 12 & 24 Lines." (*From the Dirt Cheap Dialers website - <http://www.dirtcheapdialers.com>*) Another company, HT Computers, offers an auto-dialer which "can support up-to (sic) 48 lines of Inbound or Outbound dialing while simultaneously Fax Broadcasting and Email Blasting your message to millions of prospects each day." The company boasts that its "totally integrated suite of communications applications including an auto dialer and predictive dialer" have made "millions of calls over the past 10 years." It goes on to explain

## Telemarketing Rulemaking - Comment FTC File No. R411001.

Page 3

how its systems call customers and prospects with “prerecorded interactive scripts” and “will make up to 1000 calls per day per line recording call activity and user response.” (*From the HT Computers website - <http://www.theansweronline.com/>*) These claims come from within the industry and clearly identify the scope of the problem and the need for enhanced, and far stricter, regulations.

As I have previously stated, some of the major weaknesses of the existing regulations are the difficulties which consumers encounter when attempting to be added to individual Do Not Call lists and the frequent lack of substantiation on the part of the telemarketing companies which have been granted the unique opportunity to maintain their own regulatory lists. A National Do Not Call Registry will go a long way toward correcting these shortcomings of the existing regulations. I also anticipate that the greater awareness that the new regulations would generate will lead to far greater numbers of complaints against violators. Under the current arrangements, the number of consumers who are willing to take enforcement matters into their own hands, by seeking damages from repeat violators, is so low as to be considered merely a minor expense by the telemarketing industry. Sadder still is the fact that the current lack of public awareness regarding telemarketing regulations extends into the legal profession and our court systems. Several of my first cases against telemarketers and broadcast fax companies, entered as small claims in the District Court of the Commonwealth of Massachusetts, were dismissed by court magistrates who were grossly negligent of the law and its enforcement provisions. In fact, it became necessary for me to file formal complaints with the Chief Justice of the Administrative Office of the District Courts and the Committee On Professional Responsibility for Clerks of Court before I could obtain favorable judgments on what would otherwise appear to be “open and shut” violations. I now devote a significant amount of personal time toward educating other members of the public, primarily through organizational group seminars, regarding the current enforcement requirements of our telemarketing regulations. As the owner of a home-based business, and a homeowner with several incoming residential telephone numbers, I literally receive hundreds of unsolicited telemarketing calls per year, despite my vigilant attempts to prevent such calls from invading my personal privacy. Each intrusion represents an interruption of my workflow and essentially the theft of my valuable time.

I wholeheartedly endorse the FTC’s proposed amendments, including any added mandates which would further restrict the use of broadcast fax, close exemptions for non-profit organizations, and restrict calls which originate from outside of the United States.

Peter L. Pelland  
Haydenville, Massachusetts  
02/03/2002